

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: JOHN C. WARY AND PATSY D. WARY

(Case No. 11696)

A hearing was held after due notice on January 25, 2016. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Norman Rickard, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard, side yard, and rear yard setback requirements.

Findings of Fact

The Board found that the Applicants were seeking a variance of 0.3 feet from the ten (10) feet front yard setback requirement for an existing dwelling, a variance of 0.4 feet from the ten (10) feet front yard setback requirement for an existing dwelling, a variance of 3.9 feet from the ten (10) feet side yard setback requirement for an existing sunroom, a variance of 3.7 feet from the ten (10) feet side yard setback requirement for an existing sunroom, a variance of 3.2 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 3.1 feet from the five (5) feet side yard setback requirement for an existing shed, a variance of 5.1 feet from the ten (10) feet rear yard setback requirement for an existing sunroom, a variance of 1.3 feet from the ten (10) feet rear yard setback requirement for an existing set of steps, a variance of 1.2 feet from the ten (10) feet side yard setback requirement for an existing deck, a variance of 1.3 feet from the ten (10) feet side yard setback requirement for an existing deck, a variance 2.9 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a variance of 2.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling. This application pertains to certain real property located on the southeast side of Laws Point Road approximately 958 feet northeast of Swann Drive (911 Address: 36972 Laws Point Road, Selbyville); said property being identified as Sussex County Tax Map Parcel Number 5-33-12.16-305.00.

1. The Board was given copies of the Application, a portion of the tax map of the area, findings of fact for Case No. 8604-2004, an undated survey of the Property, minutes of Case No. 8604-2004, a copy of the Application for Case No. 8604-2004, a Certificate of Compliance dated September 21, 1998, and a survey of the Property dated September 9, 2015.
2. The Board found that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.
3. John Wary was sworn in to testify about the Application. Ray Tomasetti, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.
4. The Board found that Mr. Wary testified that he has owned the Property since 1996 and the dwelling and shed were located on the Property at time of purchase.
5. The Board found that Mr. Wary testified that the Board approved variances for the Property in 2004. The Applicants then obtained building permits to build a screen porch and a deck and to enclose an existing deck.
6. The Board found that Mr. Wary testified that a Sussex County official told him in 2004 that the deck was in compliance with the Code.
7. The Board found that Mr. Wary testified that the sunroom in the side yard was built in 2004.

8. The Board found that Mr. Wary testified that a recent survey showed the encroachments and the Applicants were not aware of the encroachment.
9. The Board found that Mr. Wary testified that, when the Applicants purchased the Property, they were told the lot measured 40 feet by 100 feet. The lot actually measures 40 feet by 97 feet. He incorrectly believed the Property extended three feet into the lagoon.
10. The Board found that Mr. Wary testified that the outside shower has been removed.
11. The Board found that Mr. Wary testified that other homes in the community are similarly situated on those lots and the variances do not alter the character of the neighborhood. The Property is located in Swann Keys.
12. The Board found that Mr. Wary testified that his neighbors have no objection to the Application.
13. The Board found that Mr. Wary testified that he seeks these variances to bring the dwelling and structures into compliance.
14. The Board found that Mr. Tomasetti stated that the need for the variances was discovered when the Applicants went to sell the Property. A Certificate of Compliance was previously issued for the screen porch and addition.
15. The Board found that Mr. Tomasetti stated that the 2004 survey was not as detailed as the current survey so the need for the variances was not discovered until recently.
16. The Board found that Mr. Tomasetti stated that the location of the structures has not changed since 2004 and the Applicants believed they were in compliance with the Sussex County Zoning Code.
17. The Board found that Mr. Tomasetti stated that Property is unique as it is shallow and only 40 feet wide. Other lots in Swann Keys are 50 feet wide.
18. The Board found that Mr. Tomasetti stated that the Property cannot otherwise be developed and the variances will enable reasonable use of the Property.
19. The Board found that Mr. Tomasetti stated that the Applicants did not create the need for the variances and that the variances are the minimum variances to afford relief.
20. The Board found that Mr. Wary, under oath, affirmed the statements made by Mr. Tomasetti.
21. The Board found that no parties appeared in support of or in opposition to the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its unique size. The Property is quite small as it is only 40 feet wide, which is narrower than other lots in Swann Keys. The Property is also located adjacent to a lagoon as evidenced by the survey. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty for the Applicants who seek to retain an existing home and related structures on the lot. The situation is also unique because the Applicant reasonably believed that the structures complied with the Sussex County Zoning Code after obtaining variances in 2004 and a certificate of compliance in 1998.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and the buildable area thereof is limited due to its size. The Applicants seek to retain a dwelling and related structures of a reasonable

size but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow a reasonably sized dwelling and related structures to remain on the Property. The Board is convinced that the size, shape, and location of these structures are reasonable, which is confirmed when reviewing the survey and pictures provided by the Applicants.

- c. The exceptional practical difficulty was not created by the Applicants. The Applicants did not create the unusual size of the Property; which is particularly narrow even for lots within Swann Keys. The unique lot size has resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. Furthermore, the dwelling and shed were placed on the Property by a prior owner and have been in their present location since at least 1996. Other structures on the Property have been in their current locations for many years as well and the Applicants obtained variances for some of those structures. The unique characteristics of the Property are clear when reviewing the survey. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and by the placement of the structures thereon by prior owners.
- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the dwelling and structures will have no effect on the character of the neighborhood. The dwelling and shed have been on the Property since at least 1996 and the other structures on the Property have been in their present locations for many years as well. Despite the longstanding locations of these structures, no complaints were noted in the record about the locations of the structures. Furthermore, no evidence was presented which would indicate that the variances would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain a reasonably sized dwelling and related structures on the Property. The Applicants do not intend to make any additions to the structures and only seek the variances to allow the existing structures to remain in their current locations.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Mr. Jeff Hudson, Mr. John Mills, Mr. Norman Rickard, and Mr. Brent Workman. No Board Members voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


Dale Callaway
Chairman

If the use is not established within one (1)
year from the date below the application
becomes void.

Date March 22, 2016.